

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LATTERS PATENT APPEAL (STAMP) NO.21114 OF 2005
ALONG WITH
CIVIL APPLICATION NO.285 OF 2005

Office notes, office	:	
Memoranda of Coram,	:	
appearances, Court's	:	Court's or Judge's Orders
orders or directions &	:	
Registrar's orders.	:	

Mr. Mahabaleshwar Morje for the
appellant.

Mr. Prashant Naik with Mr. N. Sahu i/b
M/s. S.K. Shrivastava & Co. for
respondent 3.

**CORAM: SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.**

DATED: 16TH JANUARY, 2006.

P.C.:-

1. We have heard Mr. Morje, the
learned counsel appearing for the
appellant. In our opinion, the Letters
Patent Appeal is not maintainable. By
the impugned order, the learned single
judge has disposed of the writ petition

by observing as under :

"2. This issue will have to be considered by the Assistant Charity Commissioner and it is not for this Court to decide the same in the instant petition. Admittedly, there is no provision in the bye-laws which debars non defence personnel to be the members of the petitioner society and it is now submitted that non defence personnel membership is not 75 as at present but indeed it has increased to about 200.

3. This petition is, therefore, disposed of with liberty to the respective parties to address or agitate on the issue regarding the eligibility to contest as members of the Managing Committee and it is clarified that non defence personnel members have a right to vote.

4. If the petitioners challenge the change report purported to have been submitted on or about 25.10.2004 within a period of two weeks from today, it is directed that the respondent No.2 shall decide the petition on their own merits as expeditiously as possible and in any case within a period of two months from filing the petition. In the meanwhile, the status quo as at present shall continue."

2. Our attention is drawn by Mr. Naik, the learned counsel appearing for respondent 3 to the judgment of the Supreme Court in Mithailal Dalsangar Singh and others, v. Annabai Devram Kini and others, AIR 2003 SCC 4244. In that case, while considering the maintainability of the Letters Patent Appeal, the Supreme Court observed as under:

"What is a 'judgment' within the meaning of Letters Patent came up for the consideration of this court in Shah Babu Lal Khimji v. Behan D. Kangro, AIR 1981 SC 1786. It was held that a decision by a trial Judge on a controversy which affects valuable rights of one of the parties is a 'judgment'. However, an interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties, and which work serious injustice to the party concerned."

3. The order of the learned single judge does not decide matters of moment or affect vital and valuable rights of the parties. It does not work serious injustice to the party concerned. It only gives liberty to the parties to approach the Assistant Charity Commissioner as he can consider the issue involved in the petition. In view of this, the Letters Patent Appeal is dismissed as not maintainable.

4. Certified copy is expedited.

5. In view of the dismissal of the appeal, Civil Application No.285 of 2005 does not survive and is disposed of such.

(SMT. RANJANA DESAI, J.)

(D.B. BHOSALE, J.)